

120-13-BZ

CEQR #13-BSA-129R

APPLICANT – Eric Palatnik, P.C., for Okun Jacobson & Doris Kurlender, owner; McDonald’s Corporation, lessee.

SUBJECT – Application April 25, 2013 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (*McDonald’s*) with an accessory drive-through facility. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, north side of Forest Avenue, 100’ west of intersection of Forest Avenue and Morningstar Road, Block 1180, Lots 6 and 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated March 27, 2013, acting on Department of Buildings Application No. 520133105, reads:

Eating or drinking establishment with accessory drive-through facility is not permitted in C1 district; contrary to ZR 32-15; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within a C1-1 (R3-2) zoning district, the operation of an accessory drive-through facility on the site in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on September 10, 2013, with continued hearings on October 22, 2013 and November 26, 2013, and then to decision on January 14, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, citing concerns about noise due to the 24-hour operation of the establishment and late-night garbage collection, and about traffic; and

WHEREAS, the subject site is an irregularly-shaped zoning lot comprising Tax Lots 6 and 49, with frontages on the north side of Forest Avenue and the west side of Morningstar Road, within a (C1-1) R3-2 zoning district; and

WHEREAS, the site has 125 feet of frontage along Forest Avenue, 169.5 feet of frontage along Morningstar Road, and a lot area of 42,788 sq. ft.; and

WHEREAS, the site is occupied by a one-story

eating and drinking establishment (Use Group 6, operated by McDonald’s) with 4,410 sq. ft. of floor area (0.1 FAR), an accessory drive-through, and 62 accessory parking spaces; and

WHEREAS, the Board previously exercised jurisdiction over the site when, under BSA Cal. No. 808-94-BZ, it granted a special permit to legalize an existing accessory drive-through for a term of five years, to expire on June 3, 2002; and

WHEREAS, the applicant now seeks to obtain a new special permit for an accessory drive-through in connection with its redevelopment of the site, which will include a new, one-story McDonald’s building with 4,219 sq. ft. of floor area (0.09 FAR), a reconfiguration of the site circulation, and a reduction in the number of accessory parking spaces from 62 spaces to 42 spaces (a minimum of 26 parking spaces are required, per ZR § 36-21); and

WHEREAS, a special permit is required for the proposed accessory drive-through facility in the C1-1 (R3-2) zoning district, pursuant to ZR § 73-243; and

WHEREAS, under ZR § 73-243, the applicant must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for at least 13 vehicles; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in support of this representation, the applicant states that the site has three curb cuts, two on Forest Avenue, a heavily-trafficked thoroughfare, and one along Morningstar Road, and that each curb cut is located a sufficient distance from any intersection and will not adversely affect traffic flow on the streets; and

WHEREAS, in addition, the applicant represents that the proposed reconfiguration of the site increases the reservoir spaces for vehicles using the drive-through, which will further improve the overall traffic flow of the site; and

WHEREAS, the applicant notes that an eating and drinking establishment has existed at the site since at least the mid-1970s and that a drive-through has operated since the mid-1990s; therefore, the drive-through is well-

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established in the neighborhood and will not create new traffic patterns in the vicinity; and

WHEREAS, the applicant submitted a site plan that demonstrates that the facility complies with the accessory off-street parking regulations for the C1-1 (R3-2) zoning district; as noted above, the proposed 42 parking spaces is well in excess of the 26 parking spaces required under ZR § 36-21; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward motor vehicles and is predominantly commercial in nature; and

WHEREAS, the applicant states that Forest Avenue is a heavily-travelled commercial thoroughfare occupied by a variety of uses, including restaurants, drug stores, supermarkets, banks, offices and retail stores; in addition, the portion of Morningstar Road on which the site fronts is a two-way street that includes retail uses, and

WHEREAS, the applicant states that such uses and the surrounding residential neighborhoods they support are substantially oriented toward motor vehicle use; and

WHEREAS, the Board notes that the applicant has submitted photographs of the site and the surrounding streets, which supports this representation; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant states that the impact of the drive-through upon residences is minimal, in that most of the surrounding properties are occupied by commercial uses; and

WHEREAS, the applicant notes that while there are nearby residential uses, they are located to the north and west of the site, whereas the restaurant and the majority of its parking, are located on the southern and eastern portions of the site; likewise, the applicant states that the menu board for the drive-through will be located approximately 47 feet from the nearest residence's lot line; and

WHEREAS, the applicant represents that there will be adequate buffering between the drive-through and the nearby residences in the form of a fence, trees, shrubs, and planting beds; and

WHEREAS, accordingly, the applicant represents that the drive-through facility satisfies each of the requirements for a special permit under ZR § 73-243; and

WHEREAS, the applicant represents that the community is not adversely impacted by the legalization and modification of the existing drive-through; and

WHEREAS, the applicant states that the restaurant is well-established in the neighborhood and has existed with a drive-through for approximately 20 years; and

WHEREAS, the applicant notes that the drive-through window does not increase the number of vehicular visits to the site but rather decreases the amount of time that restaurant patrons spend at the site; and

WHEREAS, at hearing, the Board raised concerns about the enclosure of the dumpsters, the late-night garbage collection, the 24-hour operation of the drive-through, and the lack of directional signage and striping in the parking lot; and

WHEREAS, in response, the applicant submitted amended plans showing a masonry enclosure of the dumpsters and new directional signage and striping; in addition, the applicant submitted a letter from the proprietor of the McDonald's certifying that the hours of garbage collection would be limited to daily, between 8:00 a.m. and 10:00 p.m.; and

WHEREAS, as to the 24-hour operation of the drive-through, the applicant asserts that it is essential to the operation of the restaurant; and

WHEREAS, the Board noted at hearing that the five-year term of the special permit will allow for monitoring of the site for compliance with the conditions of the grant; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR Part 617.2 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA129R dated April 24, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

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Therefore it is Resolved, that the Board of Standards and Appeals issues a negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to permit, on a site within a C1-1 (R3-2) zoning district, the operation of an accessory drive-through facility on the site in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2013"- (9) sheets; and *on further condition*:

THAT the term of this grant will expire on January 14, 2019;

THAT the premises will be maintained free of debris and graffiti;

THAT parking and queuing space for the drive-through will be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering will be maintained as indicated on the BSA-approved plans;

THAT exterior lighting will be directed away from the nearby residential uses;

THAT all signage will conform to C1-1 zoning district regulations;

THAT the hours of garbage collection will be limited to daily, between 8:00 a.m. and 10:00 p.m.;

THAT the above conditions will appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, January 14, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, January 14, 2014.
Printed in Bulletin Nos. 1-3, Vol. 99.

Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.

